

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA)
)
v.)
) Case No. 3:11-CR-25
DAVID MINER) PHILLIPS/SHIRLEY
)

**MOTION TO DISMISS FOR VIOLATION OF THE FIFTH
AMENDMENT DUE PROCESS CLAUSE**

Comes the defendant, David Miner, and moves this Honorable Court for an Order dismissing the Superseding Indictment in this case based on a violation of his Fifth Amendment right under the United States Constitution to Due Process of Law.

Mr. Miner was arrested in Florida on an indictment that had never been returned by a grand jury. He came to Tennessee based on this illegal indictment. He was presented in Court with two additional indictments that had not been presented to a grand jury. Finally a fourth indictment was presented which pretends to be a proper indictment. Now the government has returned to the grand jury to obtain another indictment, at least the fifth in this case. No indictment has been dismissed so all of these indictments are arguably in play. This whole process is flawed by illegal indictments, an arrest on an illegal indictment, and appearances in court based on indictments which had not been presented to the grand jury. All of this adds up to a total violation of Mr. Miner's Fifth Amendment right to due process of law. The only proper remedy is to dismiss all of the indictments and the Superseding Indictment.

Respectfully submitted this the 31st day of October, 2011.

FEDERAL DEFENDER SERVICES OF
EASTERN TENNESSEE, INC.

By: s/Kim A. Tollison
Kim A. Tollison
Asst. Federal Community Defender
800 S. Gay Street, Suite 2400
Knoxville, TN 37929
(865) 637-7979
BOPR No. 1756
COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2011, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the court's electronic filing system.

s/Kim A. Tollison
Kim A. Tollison